IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 30 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COLLECTOR

Versus

RASIKBHAI JIVRAQJBHAI VAGHASIYA

Appearance:

1. Special Criminal Application No. 30 of 2003

MRS ML SHAH ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 19/01/2005

ORAL JUDGEMENT

1. The present writ petition has been preferred against the order passed by Sessions Court, Junagadh in

Criminal Appeal No.44 of 1998 dated 9th January 2002.

2. Learned APP mainly submitted that the order passed by the Sessions Court, Junagadh in Criminal Appeal No.44 of 1998 is prima facie erroneous, bad in law and dehors the facts. The order of confiscation passed under the Essential Commodities Act, 1955 was under challenge before the Sessions Court, Junagadh. The said order was challenged by the respondent (original appellant). A well reasoned order of the Collector, Junagadh district dated 19th May 1998 passed under Section 6-A of the Essential Commodities Act, 1955 has been modified by the Sessions Court, Junagadh, whereby instead of confiscation of 50% of the total quantity, it is reduced to 20%, without assigning any reason. The impugned judgment delivered by the lower appellate Court is a non-speaking order. It is also submitted by the learned APP that infact, there is no error in the order of confiscation passed under Section 6-A of the Essential Commodities Act, 1955 by the Collector, Junagadh district, whereby 50% of groundnut oil was ordered to be confiscated. A huge quantity of groundnut oil was disposed of by the respondent (original appellant), unauthorisedly and without maintaining any account. That quantity was at 32757 kg of groundnut oil. There was no need for the lower appellate Court to reduce the percentage of confiscation without assigning reasons and, therefore, a non-speaking order ought not to have been passed by the lower appellate Court and, therefore, the order passed by the lower appellate Court deserves to be quashed and set aside and matter may kindly be remanded to Sessions Court, Junagadh with a stipulation to dispose of the same within time bound schedule.

3. I have heard the counsel appearing for respondent. It is fairly submitted by the learned counsel appearing for the respondent that looking to the impugned order, reasons have not been assigned for reduction of percentage of confiscation of groundnut oil. Option was given by this Court, to argue out the matter on merits before this Court, but, it is submitted by the learned counsel appearing for the respondent that batter course would be to remand the matter to the Sessions Court, Junagadh, so that in detail the statements of witnesses, the Panchnams and the other documents of the case, can be referred to, before the Court exercising appellate jurisdiction.

4. In view of the aforesaid submissions of both the counsels and looking to the facts and circumstances of the case, the order passed by the Sessions Court,

Junagadh dated 9th January 2002 in Criminal Appeal No.44 of 1998 is a non-speaking order. The only reasoning given, reveals that the impugned order of the Collector, Junagadh district is erroneous and, therefore, 50% confiscation of the groundnut oil is excessive and, therefore, the same is reduced to 20%. For this deduction of percentage of confiscation, no reasons have been assigned. Though, learned APP has taken this Court to the order of seizure, order of confiscation and other material, it is not necessary for this Court to refer the same, as the order passed by the lower appellate Court is a non-speaking order and when this Court is remanding the matter for early disposal of the matter by the Sessions Court, Junagadh.

5. In view of the aforesaid facts, the order passed by the Sessions Court, Junagadh dated 9th January 2002 in Criminal Appeal No.44 of 1998 is hereby quashed and set aside, as no reasons have been assigned for reduction of percentage of confiscation. As held by Hon'ble the Apex Court in Notified Area Committee Vs. Additional Director, Consolidation and Ors., reported in (2002) 10 SCC 87:

> "reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the order which are liable to be challenged in the superior Court."

The matter is remanded to the Sessions Court, Junagadh. The Sessions Court, Junagadh shall hear and decide the Criminal Appeal, afresh, as expeditiously as possible and preferably with a period of six months from the date of the receipt of the writ of this Court. Rule is made absolute with no order as to costs.

(D.N.Patel, J.)

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